



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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August 31, 2015

CBCA 4761-RELO

In the Matter of ANNETTE M. ZAPF

Annette M. Zapf, FPO Area Pacific, Claimant.

Maj. Michelle L. Over, Pacific Area Counsel Office, Marine Corps Installations Pacific, United State Marine Corps, FPO Pacific Area, appearing for Department of the Navy.

**KULLBERG**, Board Judge.

Claimant, Annette M. Zapf, brings this matter after she advised her agency of her intent to resign from her current position outside the continental United States (OCONUS) and was informed that she was not entitled to return travel and transportation expenses from her overseas permanent duty station (PDS) in Japan to her former residence in the continental United States (CONUS) because she has not served the twenty-four month period required by her current service agreement. For the reasons stated below, the Board finds that because Ms. Zapf served an OCONUS tour in Italy and transferred from there to her current PDS in the interest of the Government, she has an unused entitlement for the expense of return travel and transportation to CONUS from Italy that is a credit against her liability for the expense of travel and transportation to CONUS from Japan.

Background

Ms. Zapf was employed by the Department of the Navy when she transferred from her former residence in CONUS, San Diego, California, to her first OCONUS tour at the United States Naval Air Station, Sigonella, Sicily, Italy. She executed a service agreement on

October 24, 2011, in which she agreed to serve a thirty-six month tour in Italy that commenced on her reporting date of February 7, 2012.

After serving in Italy for almost two years, Ms. Zapf was selected for her current position at Marine Corps Installations Pacific Command (MCIPAC or agency), Okinawa, Japan. On December 11, 2013, Ms. Zapf executed a service agreement with MCIPAC in which she agreed to serve a tour of twenty-four months in Japan. Before she departed from Italy, the Navy, by letter dated January 23, 2014, approved Ms. Zapf's early release from her thirty-six month service agreement.

On February 19, 2014 Ms. Zapf reported to her new duty station in Japan. After having served more than a year but less than two years of her current tour, Ms. Zapf advised MCIPAC that she intended to resign from her current position and return to CONUS. After Ms. Zapf was informed by MCIPAC that the Government would not pay for her return travel to CONUS, she brought her claim to the Board. Subsequent to submitting this matter at the Board, Ms. Zapf sent a letter to MCIPAC in which she stated her intent to resign effective September 11, 2015.

### Discussion

The issue in this matter is whether Ms. Zapf is entitled to the expense of return travel and transportation to her former residence in CONUS, even though she has not completed her twenty-four-month tour in Japan as required in her service agreement. Statute provides that when an employee returns to CONUS after having served at an OCONUS duty station, the Government may pay certain expenses that include the travel expenses for the employee and his or her dependents and the shipment of household goods (HHG) after having completed a prescribed tour of not less than one year and not more than three years. 5 U.S.C. §§ 5722(a), (c), 5724(d) (2012). The Federal Travel Regulation (FTR), which applies to Ms. Zapf, states the following:

**Must my agency pay for return relocation expenses for my immediate family and me once I have completed my duty OCONUS?**

Yes, once you have completed your duty OCONUS as specified in your service agreement, your agency must pay one-way transportation expenses for you, for your family member(s), and for your household goods.

41 CFR 302-3.300 (2014) (FTR 302-3.300).

Ms. Zapf acknowledges that by resigning from her current position, she is violating her service agreement with MCIPAC, but she also argues that MCIPAC has not allowed her any credit for her service in Italy. The FTR states the following:

**If I violate my new service agreement, will the Government reimburse me for return travel and transportation to my actual place of residence?**

If you violate your new service agreement, the Government will reimburse you for return travel and transportation to your actual place of residence only if you did not receive all of your allowances under a previous service agreement in which you successfully completed your required period of service. The Government will then authorize you reimbursement cost for return travel and transportation expenses from your former post of duty to your actual place of residence. If there is any additional cost you must pay the difference.

FTR 302-3.224.

The Joint Travel Regulations (JTR), which also apply to Ms. Zapf, provide the following:

3. Employee Completes One or More Years but Does Not Complete the Specified Service

....

b. If the PDS is different, the employee is

(1) Financially responsible for the costs of transportation for self, dependents and HHG from the PDS at which the employee did not complete the agreed-upon tour, under the renewal agreement to the actual residence.

(2) Credited against this liability, is an amount equal to the costs of transporting, from the former PDS at which the service requirement was completed to the actual residence, the employee's HHG and any of the employee's dependents who did not accompany the employee to the actual residence for leave provided the employee was separated from Gov't service. These credits and any remaining liability are computed as in par. 5856-C2.

JTR 5856-C.3. Additionally, the JTR provide that “[c]omputations of an employee’s liabilities and credit, including those remaining from an employee’s previous tour(s) of duty, must be based on actual costs and/or constructed costs (i.e., the rates applicable at the time the employee fails to fulfill the terms of the new service agreement).” *Id.* 5858-A.

Although Ms. Zapf’s resignation before completing her twenty-four-month tour in Japan would be a violation of her agreement to serve twenty-four months in Japan, she has also served a previous tour in Italy, and the Board’s inquiry turns to what entitlement to return travel and transportation expenses accrued as a result of her tour in Italy. In a case involving circumstances similar to those in this case, the Comptroller General held that an employee who transferred in the interest of the Government before completing his first overseas tour of duty in Guam was still entitled to the unused entitlement of return travel and transportation expense from Guam back to CONUS when the employee left his second overseas tour in the Marshall Islands before completing that tour as required in his service agreement. *Neil Gorter*, B-194448 (Apr. 28, 1980). The Comptroller General stated the following:

Mr. Gorter completed his initial service agreement since he was relieved of his obligation to complete the full 2 years of service because of a transfer for the benefit of the Government. He, therefore, had an unused entitlement for return travel and transportation from Guam to his actual residence. Thus, he is entitled to return travel and transportation expenses from Majuro, Marshall Islands, not to exceed the cost of such travel from Agana, Guam, to Sacramento, California.

*Id.*; see also *Regina V. Taylor*, GSBCA 13650-RELO, 97-2 BCA ¶ 29,089, at 144,806 (citing *Neil Gorter* in finding that an employee who transferred in the interest of the Government before completion of two-year overseas tour under her service agreement “did not forfeit her right to travel allowances in connection with her change of station on this basis.”).

Although Ms. Zapf served less than thirty-six months in Italy, she did not forfeit her entitlement to return travel and transportation expenses that accrued from her service in Italy. Having transferred in the interest of the Government from Italy to Japan, Ms. Zapf had an unused entitlement to return travel and transportation from Italy to CONUS. MCIPAC, consequently, errs in taking the position that Ms. Zapf had not fulfilled the terms of her service agreement in Italy when she transferred to Japan.

Ms. Zapf’s entitlement to the expense of return travel and transportation will require computing the expense of transferring back to her former residence in CONUS from both her former PDS in Italy and her present PDS in Japan. Her liability for the expense of her move

would be the amount that the expense of her transfer from Japan exceeds the cost of her transfer from Italy. The record in this matter is not clear as to whether those expenses have been computed and compared to determine Ms. Zapf's possible liability, and the Board remands this matter to MCIPAC to make that determination consistent with this decision.

Decision

The claim is granted to the extent that Ms. Zapf is entitled to the expense of return travel and transportation from her current PDS in Japan to her former residence in CONUS in an amount not to exceed the expense of return travel and transportation from her previous PDS in Italy to her former residence in CONUS. The Board remands this matter to MCIPAC for such a determination consistent with this decision.

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H. CHUCK KULLBERG  
Board Judge